THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 1 | JUNE - JULY, 1951 | Number 5

. . . THERE ARE TWO WAYS of fighting subversive ideas. One is the policy of repression. This policy is contrary to the letter and spirit of the Constitution of this country. It cannot be justly enforced, because it is impossible to tell precisely what people are thinking; they have to be judged by their acts. It has been generally thought that the widest possible latitude should be given to freedom of speech and publication, on the ground that the expression of differing points of view, some of which are bound to be unpopular, is the way to progress in the state. Hyde Park Corner in London, where anybody may say anything, has long been a symbol of the confidence of the Anglo-Saxon world in the ability of democratic institutions to withstand criticism, and even to nourish itself upon it. There are numerous laws already on the books which provide for the punishment of subversive acts.

The policy of repression of ideas cannot work and never has worked. The people have been committed. It requires patience and tolerance even in the face of intense provocation. It requires faith in the principles and practices of democracy, faith that when the citizen understands all forms of government he will prefer democracy and that he will be a better citizen if he is convinced than he would be if he were coerced.

—Robert Maynard Hutchins

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Published Bi-Monthly by

THE DECALOGUE SOCIETY OF LAWYERS

180 W. Washington St. Chicago 2, Illinois

Telephone ANdover 3-6493

Volume 1 JUNE - JULY, 1951 NUMBER 5

IN THIS ISSUE

DECALOGUE ANNUAL MEETING

The 1951 Annual Meeting and Election of officers of The Decalogue Society of Lawyers will be held on Friday, May 25, at 12 O'clock, noon, at the Covenant Club, 10 N. Dearborn Street. Luncheon will be served.

Judge Julius J. Hoffman of the Superior Court, Cook County and nominee for our Board of Managers will be the principal speaker. The title of the Judge's subject is "Trial by Television."

The following nominations for officers and members of The Board of Managers to be elected at the Annual Meeting have been made by The Nominating Committee:

President	Archie H. Cohen
First Vice-President	Harry A. Iseberg
Second Vice-President	Paul G. Annes
Treasurer	Harry H. Malkin
Financial Secretary	Judge Abraham L. Marovitz
Executive Secretary	Richard Fischer

Members of the Board of Managers for Two-year Term:

Hon. Benjamin M. Becker	Hon. Marshall Korshak
Saul A. Epton	Eva R. Pollack
Harry G. Fins	Morton Schaeffer
Reuben S. Flacks	Nathan Schwartz
Judge Julius J. Hoffman	Bernard H. Sokol

Nathan D. Kaplan

To fill vacancy for unexpired term of one year:

Matilda Fenberg

Members and friends are urged to attend.

Combined Jewish Appeal

The Lawyers Division of the Combined Jewish Appeal will be led this year by Judge Julius H. Miner, of the Circuit Court. The Judge announced the appointment of President Carl B. Sussman and Henry L. Burman as co-chairmen of the campaign.

Plans are in formation for a series of meetings to implement the purposes of the drive. Announcements to the legal profession of the date of the principal fund raising dinner will follow shortly.

DECALOGUE ISSUES

By CARL B. SUSSMAN, *President*

My Stewardship

This is the final month of my incumbency in office as the President of The Decalogue Society of Lawyers. It behooves me therefore to submit a bill of particulars, a brief summary of my stewardship.

I do so with a sense of humility and profound appreciation of the opportunity afforded me to serve our Society. In retrospect, it seems to me, that though I tried hard to discharge my duties —what was accomplished was inadequate in comparison with the goals I have set for myself. I aspired for perfection but to achieve that was not granted to me; I have carried on to the best of my abilities and am about to leave my office feeling that more could have been done for the common good of our membership and the whole profession. Be that as it may my gratitude is deep to fellow members of our Board of Managers whose guidance and help were of inestimable value in the discharge of my responsibilities and, to the Society as a whole for bestowing upon me the highest honor within its gift.

The Decalogue Society of Lawyers functions through its committees, appointed by the President. It is to several members particularly that I wish to do homage and express my deep gratitude for a job well done. Such credit, if any, that my administration may claim as a contribution to the welfare of the Society I owe to the chairmen of the various committees and to the members thereof:

Civic Affairs Committee, ELMER GERTZ, Chairman, was indefatigable in its work to arouse public opinion against the McClintock and Broyles Bills pending before the Illinois Legislature; fought hard, as it did in previous years, for F.E.P.C. legislation and was ever alert to attacks upon our Bill of Rights and encroachments upon our liberties.

Post Legal Education Committee, HARRY A. ISEBERG, Chairman, carried through a successful series of lectures on Reviews of Recent Court Decisions, and initiated for the first time in the history of our Society an all day Tax Institute. The popularity of this innovation is attested by requests that other Institutes on various legal problems take place in the near future.

Decalogue Foundation Fund Drive, NATHAN SCHWARTZ, Chairman, successfully concluded a campaign to increase the treasury of the Fund. A substantial amount of money was raised and the profession again aroused to the importance and usefulness of this important field of our activities.

Law Library, EVA POLLACK, Chairman; our executive offices and library were formally dedicated in all day ceremonies. The Society held open house attended by hundreds of members and the judiciary, to acquaint themselves with the facilities of our new quarters and reading rooms.

Forum Committee, BERNARD H. SOKOL, Chairman, held several capacity attended meetings at which pertinent and vital topics of the day were ably discussed by prominent members of the laity and the Bar.

Planning Committee, PAUL G. ANNES, Chairman, advanced the need for several projects the purpose of which was to enlist a larger interest of the membership in the work and purposes of our Society.

Speakers Bureau, ALEX M. GOLMAN, Chairman, addressed numerous meetings on communal, philanthropic and problems arising from the pressing needs of the new State of Israel.

The Decalogue Journal. BENJAMIN WEINTROUB, Editor. The Board of Managers authorized the creation of a new Bi-Monthly publication which, I believe, has won the general approval of our Society and the legal profession as a whole.

Our Golf Tournament and Dinner Dance was exceptionally well attended by the members and their families. Hundreds of door prizes were distributed.

Our Annual Award Dinner was outstanding in every respect. The selection of Dr. Percy L. Julian as the recipient of the 1950 Decalogue Award of Merit won the approbation of hundreds of leaders in many fields of endeavor in this country.

Other Activities

Following our custom, judicial candidates of both political parties addressed our membership at four successive luncheon meetings.

On several occasions at our weekly Friday Board meetings men of prominence spoke before our Board of Managers on communal and legal problems.

The Society has voiced its approval or opposition on matters of public importance, through regular and special Committees.

We have frequently demonstrated our readiness and interest to co-operate with all Bar Associations and in particular with The Chicago Bar Association and Illinois State Bar Association on problems of common interest to the legal profession. We advocated the adoption of The Gateway Amendment.

Other committees which have functioned diligently during my term in office and who have rendered invaluable services to our Society are:

City and State Legislation Committee, Benjamin M. Becker, Chairman. Diary and Appointment Book, Oscar M. Nudelman, Chairman. Membership Committee, H. Burton Schatz, Chairman. Membership Conservation, Michael Levin, Chairman. Placement Bureau, Eugene Bernstein, Chairman. Merit Award Committee for 1950, Roy I. Levinson, Chairman.

I salute also the following members for the assistance and counsel which have helped me carry on my duties:

Judges Julius J. Hoffman and Abraham L. Marovitz, Our First Vice-President, Archie H. Cohen, Harry D. Cohen, Jack E. Dwork, Samuel Allen, Harry G. Fins, Norman N. Eiger, Solomon Jesmer, Harry D. Koenig, L. Louis Karton, Morton Schaeffer, David F. Silverzweig, Frank E. Shudnow, Joseph M. Solon, Maxwell N. Andalman, Samuel L. Antonow, and Daniel Uretz. And, of course, all the officers of our Society.

International tensions abroad and domestic problems at home have caused confusion throughout all levels of our commonwealth. This confusion is reflected in the many dangerous and ill considered bills currently before our Legislature. I urge the lawyers to speak up if our civil rights are to remain inviolate. I recommend our Society's vigilance in the months ahead on matters affecting our country's welfare.

On June 23, 1950 upon induction into office I made the following statement which I now wish to reiterate:

"The lawyer through his Bar Association can become a more effective pleader for greater progress if he is intensely conscious of the opportunities for public service which his calling affords him. If, for instance, we are to exert our influence and strive for Constitutional revision for Illinois, then we as citizen lawyers and leaders of our community must first acquaint ourselves with the many problems before us. We must become intimately familiar with the legal complexities involved. To be responsible to our profession we must not just criticize. We must participate dynamically in that which makes for a better community."

NELLIS AND SOKOL

Following the appearance of member Joseph L. Nellis, associate counsel of the Kefauver Congressional Committee April 27, at the Covenant Club, at a Decalogue Forum, Bernard H. Sokol, Chairman of our Forum Committee addressed the Society Friday, May 4.

Nellis' theme was, "On The Inside Looking Out." Our guest speaker gave a general outline of the Kefauver Committee's work and the implications of its labours to the citizenry of the country.

Sokol whose subject was, "On The Outside Looking In" dwelled upon the techniques used by the investigating body in obtaining testimony and, as a lawyer, criticized the methods applied in the examinations of witnesses at the sessions of the Committee.

Capacity audiences attended both meetings in the Grand Ball Room, Covenant Club.

Patents: Flash of Genius

By MORRIS SPECTOR

Member Morris Spector was an Examiner in the United States Patent Office from 1923 to 1926. He is the author of several articles published in technical journals.

A recent decision of the Supreme Court (A & P Tea Company vs. Super Market Equipment Corporation, decided December 4, 1950) carries such important implications in deciding the question of "invention" as a prerequisite to the obtaining of a valid patent, that a careful analysis of recent decisions of the Supreme Court is most advisable.

Under the patent statutes (35 U.S.C. 31) a patent may be obtained by anyone who has "invented or discovered" any new or useful art, machine, etc. The statute defines what is meant by "new" but in no way defines the term "invention." The requirement that there be "invention" before a valid patent may be issued is imposed not only by the statute, but also by the United States Constitution which provides (Article 1, Section 8) that:

"Congress shall have power *** to promote the progress of science and the useful arts by securing *** to authors and inventors the exclusive right to their respective writings and discoveries."

The constitutional limitations upon the right of Congress to grant patents are twofold, namely, that the grant shall be

(a) to promote the progress of science and the useful arts; and

(b) that the grant shall be to inventors.

Subject to these limitations there have been more than 2,700,000 patents granted, of which upwards of 600,000 are still in force and effect.

The question of whether or not a given departure from prior practice rises to the dignity of an invention is one of the most illusive and most frequently occurring in the patent practice. The courts have consistently declined to define the term "invention," but they have laid down a number of negative rules, rules as to what does not constitute an invention. In most cases these rules are of very little help. If the changes that are wrought by the patentee or the applicant for an invention are of such a nature as would be likely to occur to that hypothetical man known as "the man skilled in the art," it is not invention. *In each case we must decide where the historic trend of technological progress ends and the "flash of creative genius" commences.* Nor should we be confused into thinking that a great physical change from the prior practice spells invention whereas a small change does not. It is not the magnitude of departure from the prior practice that determines the presence of "invention," for sometimes the smallest changes produce the most unobvious results.

In the case of General Electric Company v. DeForest Radio Company, 44 Fed. (2) 935, decided in 1930, the Third Circuit Court of Appeals referred to the old telephone cases and stated:

"Where great results follow a change the slightness of the change tends to emphasize and make all the more remarkable, unexpected and inventive, the disproportionate result the slight change effects. It was the slight turn of a screw and the close proximity of the diaphragm that made the telephone diaphragm the carrier of speech and gave Bell due reward—not for the slight turn of the screw, but for the general effect it wrought."

In the past fifty years the Supreme Court has been progressively more and more strict in its standards as to what constitutes invention, culminating in the case of the Cuneo Corporation v. Automatic Devices Corporation, 314 U. S. 84, decided December 10, 1931, wherein the court held, in an unanimous opinion, that in order to be entitled to a patent more must be done than merely to utilize the skill of the art in bringing old tools into new combinations. The court stated that a new device, however useful it may be, must reveal "the flash of creative genius," not merely the skill of the calling. This case involved an automobile cigar and cigarette lighter wherein the lighter is heated, while it is still in its socket on the dashboard and may then be completely detached for lighting the cigarette. The earlier lighters were of the "reel" type wherein the lighter unit was connected to the automobile by a current-carrying cord or cable which was

wound on a drum, so that the igniter unit and the cable could be withdrawn from the socket for lighting a cigar or cigarette. In that case the court held that it involved no flash of genius and therefore there was no invention in eliminating the cord and providing the automatic pop-out feature so that the lighter plug will pop partially from its socket when it has been heated sufficiently to light the cigarette.

This decision by the Supreme Court was followed by a wave of decisions by the District Courts and Courts of Appeal, holding patent after patent invalid on the ground that the patentee could not show that the novelty of his improvement involved a "flash of creative genius."

In 1944 the Supreme Court, in the case of Goodyear Tire & Rubber Company v. Ray-O-Vac Company, 321 U. S. 275, in a five to four decision, sustained the patent before it and tamed down the "flash of creative genius" test as a criterion for invention. The patent there involved was a leak-proof dry cell for a flashlight battery. In the prior practice there had been a tendency for dry cells to damage the flashlight container due to leakage. The invention before the court was for an improved protective casing which prevented fluids from leaking out of the cell and causing injury to the flashlight case. Justice Black, in a dissenting opinion in that case, stated that the inventor's contribution to the prior art in that patent was the discovery "that the creamy substance in a dry cell will not leak through a steel jacket which covers and is securely fastened to the dry cell." Dissenting Justice Black failed to find a "flash of creative genius" in the provision of a steel jacket or casing to hold the substances that might leak from the dry cell and injure the flashlight casing. This case substantially reduced the amount of brilliance that was required of the "flash" before it could be called a "flash of creative genius." The court in effect sustained this patent on a showing that for over fifty years there had been a need for a leak-proof dry cell battery and that manufacturers were conscious of this need but failed to devise such a battery. Here "solving a long felt want" was held to involve invention in lieu of the "flash of creative genius."

A year after the Goodyear case the Supreme Court, in the case of Dow Chemical Company v. Halliburton Oil Well Cementing Company, 324 U. S. 321, decided March 5, 1945, reexamined the theory that "solving a long felt want" coupled with "commercial success" is evidence of invention, and held that these considerations are relevant only in a close case where all other proof leaves the question in doubt. This definitely was a swing back towards the requirement that there must be a "flash of creative genius" to sustain the statutory requirements of "invention" as a prerequisite to the grant of a patent.

The "flash of genius" theory of invention quickly raised the question as to whether the presence or absence of genius is to be determined by a subjective test or an objective test. It would certainly be a matter of genius for the writer of this article to make any invention dealing, say, with the art of oil cracking, and yet such "invention" might be obvious or routine to one trained in hydrocarbon chemistry. Under those circumstances, does the same invention possess the "flash of genius" if made by one unskilled in the technology to which the invention appertains and lack the "flash of genius" if made by one skilled in that technology? Are there to be different tests depending upon the prior knowledge or education of the inventor? This question came before the Supreme Court in the case of Sinclair & Carroll Company, Inc. vs. Inter Chemical Corporation, 325 U. S. 327, decided May 1945. That case involved printer's ink that would dry instantly on the application of heat and thus allow the more rapid operation of printing presses, since the printed sheets could be stacked or folded immediately without danger of smearing. The problem was complicated by the fact that while the ink had to dry instantly on the paper it must be of such characteristics as not to dry while on the printing plate. The inventor obtained the desired result by adding a substance which is not volatile at room temperatures and therefore will not dry on the printing plate, but which is very volatile when slightly heated so that upon heating of the printed paper the ink dries instantly. The court analyzed the prior practices and found that the quick drying properties of the patentee's solvent, when subjected to slight heating were well known, and held the patent invalid. With reference to the

question of the subjective test versus an objective test to determine the presence of invention the court held that the primary purpose of our patent system is not the reward of the individual, but the advancement of the arts and sciences. A patent is not a certificate of merit but an incentive to disclose advances in knowledge which will be beneficial to society. Consequently the patent laws are not concerned with the quality of the inventor's mind that resulted in the invention, but with the quality of his product.

Another rule as to what "does not" involve invention is the rule that the discovery of new properties in an old product is not subject to patent protection. This matter was before the Supreme Court in the case of General Electric Company vs. Jewel Incandescent Lamp Co., 326 U. S. 242, decided December 1945. The patent related to a frosted glass bulb for electric lights to reduce the glare produced in a clear glass bulb. The common prior method was to acid etch the outside surface of the bulb. This produced a rough outside surface which collected dirt and was difficult to clean. It had previously been suggested to etch the inside of the lamp, but there developed a difficulty. When the outside of the bulb was frosted its strength was not affected but when the inside surface was frosted it was found that the strength of the glass bulb was materially reduced. The patentee claimed to have discovered that if the inside, frosted, fragile bulb, was given a subsequent etching treatment its strength would be restored to that of the original clear glass. Prior publications disclosed that if a hollow inside etched glass were subjected to a second etching the resulting surface would have a silk- or satin-like appearance. Those publications were concerned with frosting for decorative purposes as applied specifically to electric light bulbs and did not appear to recognize that the second etching would strengthen the glass. The Supreme Court held that the patentee in this case had found latent qualities in an old art and adapted it to a useful end; that he had discovered a new advantage for an old product. This did not entitle him to a valid patent.

In the General Electric case there is the statement that the invention "did not advance the frontiers of science in this narrow field so as to satisfy the exacting standards of our patent system." Not much significance was given to this statement in the court's decision at that time but it is likely that this will gradually assume greater importance. Here the court intimates that in order to obtain a valid patent the patentee must "advance the frontiers of science."

In the A & P case of 1950, referred to at the beginning of this article, Justice Black in a minority opinion further developed the theory that a patent must advance the frontiers of science. There the court adjudicated a patent covering a groceries counter equipped at one end with a three sided frame or rack having no top or bottom, which, when pushed or pulled, will move groceries deposited within it by a customer to the checking clerk, and leave them there when the frame is pushed back. The court agreed that this device speeds the customer on his way, reduces checking costs for the merchant, and has been widely adopted and successfully used. The District Court and the Court of Appeals both held that the patent did involve invention. The Supreme Court, by a seven men majority decision, held otherwise. Justice Douglas wrote a separate opinion, with which Justice Black agreed, concurring with the majority on the ultimate decision but setting forth additional reasons for arriving at that conclusion, which additional reasons make Justice Douglas' concurring opinion in effect a dissent.

The majority opinion in the A & P case held that the mere bringing together of a number of old parts and elements which in the aggregate perform or produce no new or different function or operation than that heretofore performed or produced by them separately is not a patentable invention. This was the old well established law and as applied to the facts in that case should cause no great concern to those having a more than the layman's interest in patents. The patent was held to be invalid because, the majority concluded, the patentee had only united old elements with no changes in their respective functions, and there was a lack of any unusual or surprising consequences from the unification of the elements there concerned. The court stated that the counter does what a store counter has always done—it supports merchandise at a convenient height—

the three sided rack will push goods within it from one place to another, just what any such rack would do on any smooth surface. Justice Douglas in his separate opinion held that determination of validity of a patent is a question which requires reference to a standard written into the Constitution. Unlike most of the specific powers which the Constitution grants to Congress, the power to grant patents is not one in which Congress has full reign. Congress acts under the restraint which is imposed by the statement of purpose in the Constitution. The purpose is "to promote the progress of science and useful arts." Justice Douglas stated:

"The invention to justify a patent had to serve the end of science—to push back the frontiers of chemistry, physics and the like; to make a distinctive contribution to scientific knowledge."

This, stated Justice Douglas, is the "inventive genius" test. Justice Douglas proceeded to state that the Constitution never sanctioned the patenting of gadgets, that patents must serve a higher end—the advance of science—and that this is the constitutional standard of patentability. In this opinion, apparently, the majority of the Justices did not concur for nowhere in the majority opinion is there set forth such a rigorous standard, nor does the majority opinion anywhere state that the Constitution never sanctioned the patenting of gadgets. The limitation of purpose in the constitutional grant to Congress of the right to issue patents is "to promote the progress of science and the useful arts."

It appears that in the dissenting opinion Justices Douglas and Black have overlooked the conjunctive, have overlooked that the promotion of the progress of the useful arts is as much within the power of Congress as the promotion of science. The majority of the Justices, in declining to go along with Justices Douglas and Black, therefore impliedly held that Congress does have the power to legislate for the grant of patents covering gadgets which do not promote the progress of science, provided that such gadgets do promote the useful arts and do involve invention.

THE SACRED RIGHTS OF MANKIND

"The sacred rights of mankind are not to be rummaged for among old parchments or musty records; they are written as with a sunbeam in the whole volume of human nature, by the hand of Divinity itself."

—ALEXANDER HAMILTON

The Lawyer To His Love

To the practitioner, a large anti-trust suit becomes a career. Years are spent in preparation, pre-trial and trial.

—Prof. Milton Handler in The Record, a publication of the New York City Bar Association.

FAREWELL, farewell, my sweet!
The Government is suing.
My clients moo and bleat,
And I've no time for wooing.

To leave a form so fair,
So waisted, limb'd and busted,
Engulfs me in despair—
But they've been anti-trusted.

Farewell, farewell, my own!
The task brooks no denial.
Prepare for nights alone,
While I prepare for trial.

Between us an abyss
Must gape, as black as Satan.
But what, alas, is this
To Sherman or to Clayton?

* * *

FAREWELL, farewell my dear!
We'll meet again—it's fated;
Though in what distant year
Can't be prognosticated.

And, when the case is tried,
Never, O my forsaken,
Will I depart your side—
Unless appeals are taken.

—ARTHUR KRAMER

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. . . with Judges Leibowitz and Frank

By BENJAMIN WEINTROUB

It was Quentin Reynolds author and law school graduate and his book, *Courtroom* that resolved me to meet the central character of his story, Samuel S. Leibowitz. Leibowitz the criminal lawyer, the central figure in America's most famous trials in the last two or three decades and now County Judge, Kings County Court, Brooklyn, New York. Reynolds claims that "in some twenty years of practice, among literally thousands of other cases, he defended over a hundred people accused of first degree murder. Of these only one went to the eletcric chair."

When in New York last month, I decided to see the man whose defense of nine negroes already sentenced to death, the—"Scottsboro Boys"—won national attention and acclaim. Reynolds in limning the personality of Leibowitz presents the lawyer in case-like manner. What emerges in an illuminating, full length portrait of a brilliant mind concentrated on the task of setting at liberty men and women at grips with the law. Always it was application to facts involved, intense study and the ability to present a case at bar in a manner that a Judge or jury would recommend a verdict exonerating the accused.

I was accompanied on my visit to the Judge by a New York member of our Society, Max G. Koenig, long a practicing attorney in the state of New York. Koenig volunteered to make the appointment.

Judge Leibowitz is Senior Jurist in The Kings County Court. He is currently presiding over a jury convened to investigate gambling rackets, bribing of policemen and city officials in Brooklyn. The publicity resulting from the sensational revelations which have thus far emerged from the jury's examination of witnesses and records in the Brooklyn exposé, compares favorably with the attention given the fantastic testimony heard before the Kefauver Committee. Judge Leibowitz's relentless pursuit of truth brought out what he calls "shocking" evidence of corruption.

We saw him in his chambers and that briefly. A call came in from the Jury room and interrupted what promised to be a lengthy visit. The Judge, nearly six feet two, reminded me of an aging wrestler yet fit and robust. His hair is iron gray, his hands large and his voice authoritative. He spoke of corruption which various investigating agencies uncovered throughout the States.

"Crime is organized" he said, "sporadic attacks by legal agencies are salutary but what is needed is the incessant interest of the citizenry in fighting crime. The citizens themselves should initiate means to combat the despoilers of our homes and cities. Let them organize their own investigating bodies which would work in close cooperation with honest police to uncover and expose the vicious forces that bleed the weak and the foolish."

Koenig and I exchanged glances; my mute plea that I be given the right of way to ask another question won his approval. "Judge," I said, coughing a little, because a half dozen 64 dollar questions kept buzzing within, awaiting outlet. Then and there an anxious bailiff entered the room and unceremoneously interrupted our chat. He whispered to Judge Leibowitz who listened intently and then rose.

"I am sorry gentlemen, the Jury needs me" he said affably, seemingly regretting the brevity of our visit. We shook hands and parted, your editor mumbling something under his breath about Brooklyn juries.

* * *

Somewhat depressed by the brevity of my visit with Judge Leibowitz, I pressed upon fellow Decalogian Max Koenig the advisability of trying to invade the chambers of Judge Jerome N. Frank. I announced that having read at least two of that dignitary's four books I was prepared, if permitted, to question the Judge upon passages or premises in the vol-

umes that allegedly needed clarification for a constant reader and an admirer of the author. What I had really hoped that the 64 dollar questions I failed to bombard Leibowitz with I might succeed in aiming at Frank.

Koenig and I took turns at the telephone trying to convince Judge Frank's secretary of the imperative need for granting me an interview. It could have been my sweet voice; the magic name of The Decalogue Society of Lawyers or, perhaps, the Judge's own agreeable disposition but within an hour we found ourselves on the 21st floor of the United States Court of Appeals Building in the chambers and in the presence of Justice Jerome N. Frank.

The Judge is a former Chicagoan, a graduate of the University of Chicago Law School who had practiced law in Chicago from 1912 to 1925. He held important posts with the United States Government before the appointment he now holds as United States Justice.

I felt immediately at ease when with the noted jurist. He too is gray haired; of medium height, his movements are gracefully quick; a substantial, constantly working pipe is nearly always between his teeth. I tried his tobacco in my own mouthpiece and, as a result, I intend upon occasion, to question the distinguished Judge closely upon his predilection for a weed I found unworthy of a discriminating addict.

I encountered no stern Justice of forbidding mien, but a scholarly individual who reminded me agreeably of an academic character. Books, magazines, pamphlets and newspapers were upon and around his desk. His voice is pleasantly low, unhurried, but his reactions to a query are fast and intellectually sharp. Here, too, however, we were not destined to stay long. The Justice had to ascend the bench at two o'clock and he was preparing also, he told us, to leave that evening for Harvard University, for a scheduled address.

What emerged as the most significant part of a chat that touched lightly and briefly upon several themes were the Judge's remarks upon the Jews in the United States.

The Judge believes in the Jew's uncompromising identification with his "people." There is according to him no "duality of loyalties," if a Jew seeks, for instance, to help Israel in a measure compatible with his means and degree of interest in the new state. The Jew, observed the Judge, occupies an honored place among his fellow Americans and his attention to problems relevant to his fellow correligionists needs not be marred by a false sense of doubt as to his own loyalty as a patriotic American.

Judge Frank's is the attitude of a civilized mind, whose understanding of the behavior of mankind taught him that impregnable axiom "Be true to Thyself." And from that stems, I gathered after chatting with the Jurist, man's own self respect and regard for essential values of life.

We parted most reluctantly. But at least one of the 64 dollar questions I asked was satisfactorily answered.

WISE HOME DEDICATED

When in New York last month I attended (April 15) the dedication of the Stephen Wise Congress House, 15 East 84th Street. More than two thousand people representing various faiths attended the ceremonies. Many notables paid tribute to the memory of the great leader.

A message from President Harry S. Truman said:

"Few persons have symbolized the highest ideals of America more fully than did Stephen Wise. He left not only to the Jewish community but to all Americans and to free men everywhere a rich memory. It is my earnest prayer that the Stephen Wise Congress House will prove worthy of the distinguished and honored name it bears."

The six-story building will be the headquarters of the American Jewish Congress and the World Jewish Congress, of which Rabbi Wise was president.

Rabbi Wise, who died two years ago at the age of seventy-five was one of the founders of the Zionist Organization of America, The American and World Jewish Congresses, the Free Synagogue and the Jewish Institute of Religion, which is now combined with the Hebrew Union College.

Rabbi Wise was the recipient of The Decalogue Award of Merit for 1949. —Editor.

The Excess Profits Tax Act of 1950

By BENJAMIN M. BECKER

Benjamin M. Becker, nominee for our Board of Managers is alderman of the 40th ward. A lecturer on taxation, federal and state, he is co-author with Edward Warden of, Illinois Lawyers Manual, a book on various subjects of legal practice.

The Need For Increased Revenue Means Higher Taxes

The Excess Profits Tax Act of 1950 is expected by Congress to produce about 3 billion 3 hundred million dollars of revenue under the level of corporate profits existing in 1950, and between 4 and 5 billion dollars under the anticipated level of corporate profits for 1951.

That is only the beginning of higher taxes! Within a week after the passage of the Act, Congressional leaders commenced their appraisal of new sources of revenue. A new tax increase bill, stiffer and more far-reaching than either of the two enacted in 1950, is expected to be taken under consideration soon. The President has requested another 15 or 16 billion dollars of tax revenue, four to five times the estimated revenue from the 1950 Act. Current suggestions include a national sales or transactions tax, increases in individual, corporate, and excise tax rates, and the imposition of excise levies on new items. In the coming years we will, indeed, have to pay taxes, as the President has said, "until it hurts."

This, in my opinion, is as it must be. The cost of freedom and peace runs high. Our nation must rearm the democratic world against communist aggression, and at the same time combat one of the most formidable inflationary threats to the stability of the dollar in its history. In addition to providing the means of rearmament, taxation is the strongest single weapon against inflation. No consideration of political expediency should be permitted to obscure these truths.

General Statement of the Act

The main purpose of the Act is to provide for the financing of the vastly expanded military program resulting from hostilities in Korea.

The Act increases regular 1950 corporate surtax rates by 2% and imposes a special 30% tax on "excess" profits earned by corporations after July 1, 1950. In general, the theory of the tax is that a "normal" standard of earnings is 85% of the average of the incomes of the best three out of four years in the base period, 1946-1949. Everything above that is "excess profits," taxable at 30%. However, the combined rate of the corporate income tax and the excess profits tax cannot exceed a 62% ceiling rate, applied to the corporation's excess profits net income (Code Sec. 430 (a)). All else in this highly complex law is in the nature of modification, exception, or enlargement of the general rule, designed to relieve hardship cases and take care of special situations.

The tax applies to every corporation except those specifically exempted under Code Sec. 454. It applies for all taxable years, fiscal or calendar, ending after July 1, 1950. For the year 1950 the tax is imposed on full income for the corporation's taxable year in proportion to the part of such taxable year falling after June 30, 1950 (Code Sec. 430 (b)).

Under the World War II excess profits tax, the corporate income tax was imposed only on income which was not subject to excess profits tax, and the excess profits tax was imposed on income in excess of the excess profits tax credit. Under the 1950 Act, the normal tax and surtax can be computed without regard to the excess profits tax. It is an additional tax over and above the other corporate taxes. The excess profits tax is imposed at the rate of 30% on adjusted excess profits net income, which is normal tax net income (after certain adjustments) reduced by the excess profits credit, and any unused excess profits credits carried forward or back to the taxable year.

The excess profits credit of a domestic corporation may be determined by either of two methods: (1) the income or average earnings method (Code Sec. 435) and (2) the invested capital method (Code Secs. 436, 437).

Provision is made for a minimum credit of $25,000.00. Any taxpayer which, upon computing its excess profits tax credit, finds that its credit is less than $25,000.00 may raise its credit to this amount. The provision for the minimum excess profits credit, which was raised from $10,000.00 under the World War II law, was intended by Congress to relieve small corporations from excess profits tax and to encourage their growth. No doubt many corporations of multiple operations will be split into separate entities to utilize multiple minimum excess profits credits.

The base period is the period during which, it is assumed, earnings were normal. The base period consists of the four years 1946-1949, the only recent four year non-war period available. Taxpayers with fiscal years ending after December 31, 1949 but before April 1, 1950, will use as their base period the last four consecutive taxable years ending with the close of the fiscal year in 1950. Each taxpayer may eliminate the poorest 12 months in its base period counting the earnings of any remaining deficit year as zero adjust the income of the remaining three years as provided by law, and calculate from the adjusted income of these three years an average base period net income. This average is then reduced by 15% or the purposes of the average earnings credit (Code Sec. 435 (c), (d)).

There we have the first step in computing the average base period net income, of which we take 85%. To that sum we add (a) 12% of the amount of the base period capital addition, computed under Code Sec. 435 (f) (2) and (b) 12% of the net capital addition, as defined in Code Sec. 435 (g) (1), for the taxable year. The resulting figure is reduced by 12%

of the net capital reduction (as defined in Code Sec. 435 (g) (2)) for the taxable year. The result is the excess profits credit based on income.

In general, the excess profits credit of a corporation using the invested capital method is the sum of its invested-capital credit (reduced by an amount bearing the same relationship to the credit as its inadmissible assets bear to its total assets) and its new capital credit. The invested capital credit of a corporation includes equity capital, retained earnings, and borrowed capital.

Invested capital is determined in accordance with Code Sec. 437 (b), to which is applied the allowable rates of return on capital described in Code Sec. 437 (a), ranging from 12% on invested capital under $5,000,000 to 10% of invested capital in excess of $5,000,000 but not over $10,000,000, and 8% of invested capital over $10,000,000. Subject to certain adjustments, the result is the invested capital credit.

Provision For Relief

Of considerable importance in minimizing the impact of the excess profits tax are the provisions of the law with respect to relief in specific situations. Unlike the World War II excess profits tax law, which contained elaborate provisions for relief, requiring formal and detailed applications for relief by the taxpayer, the present Act establishes specific formulae for relief.

Many general provisions in the present law may eliminate the need for special relief:

(1) the substitution of a $25,000 minimum credit for the $10,000 specific exemption of the prior law;

(2) the option granted the taxpayer to eliminate the worst year in its base period for the purpose of computing its average base period net income;

(3) the treatment of a deficit in any remaining base period year as zero for the purpose of computing the average base period net income;

(4) the substitution of a 5-year carry-forward and a 1-year carry-back of the unused excess profits credit and net operating losses for the 2-year carry-forward and the 2-year carry-back used under the World War II law;

(5) the privilege of carrying over to 1950 and 1951 operating losses incurred during the base period which have not been utilized to offset the income of other years;

(6) the increase of the average base period net income for capital additions during the latter part of the base period;

(7) the adjustment of the average base period net income for capital additions after the base period with a broader application and higher rates than the equivalent provision of the World War II law; and

(8) the provision that the combined rate of the corporate income tax and the excess profits tax cannot exceed 62% of the corporation's income.

Provision is made for specific relief beyond the foregoing general relief. Automatic formulae are provided for each of the most important types of cases which arose under old Code Sec. 722. These formulae permit an objective computation of the amount of relief granted in each case, thus avoiding the delays and disparity of treatment among taxpayers which characterized the application of the relief provisions of the prior law.

In general, relief is provided in the following situations where the average base period net income does not reflect normal income;

(1) The existence of abnormalities during the base period, as described in Code Sec. 442. The taxpayer must establish that for any taxable year within or beginning or ending within, its base period: (a) Normal production, output, or operation was interrupted or diminished because of the occurrence, either immediately prior to, or during such taxable year, of events unusual and peculiar in the experience of such taxpayer such as fire or a strike or (b) the business of the taxpayer was depressed because of temporary economic circumstances unusual in the case of such taxpayer, such as a price war.

(2) There has been a change in the products manufactured or services rendered by the taxpayer as described in Code Sec. 443. Corporations which commenced business after the beginning of the base period are not eligible under this provision but may qualify for a substitute net income under the "new corporation" rules as described in Code Sec. 445. To qualify for relief under the "new product" provision the change in products or services must have been substantial.

(3) The taxpayer has increased its capacity for production or operation, as described in Code Sec. 444. A corporation which commenced business before its base period and made substantial changes in its capacity during the last 36 months of the base period may also elect a substitute average base period net income, under Code Sec. 444 (a). This relief is confined to taxpayers whose capacity has undergone a change which is sufficiently great measured by specific percentage increases in capacity, to make their base period earnings experience a poor basis for evaluating their earnings during the excess profits tax period.

(4) The Taxpayer is a new corporation, as described in Code Sec. 445. An alternative basis for determining the average base period net income is provided for new corporations, under Code Sec. 445. Unlike the World War II law, the new law combines the relief treatment for new corporations which commenced business during the base period with those which commenced business subsequent to the base period. In both cases an alternative average base period net income is provided which will make it unnecessary for the taxpayer to reconstruct a hypothetical base period experience as it did under Sec. 722 of the World War II law. There are no requirements for the use of the alternative average base period net income other than that the business be started after the beginning of the base period (Code Sec. 445 (a)).

(5) The taxpayer is a member of a depressed industry subgroup as described in Code Sec. 446. The law provides substitute average base period net income in cases where the taxpayer's industry subgroup was depressed during the base period. Like the World War II law, the present Act requires the reconstruction of a hypothetical base period income, when the taxpayer shows that the entire industry subgroup of

which it was a part was depressed during the base period. To qualify for relief under Sec. 446 the taxpayer must have commenced business on or before the first day of the base period and must be a member of a "depressed industry subgroup," as described in Code Sec. 446. A depressed industry is one in which the industry average rate of return on total assets during the period 1946 through 1948 is less than 63 percent of its average rate of return over the period 1938 through 1948. The Treasury Department will be required to classify business into industry subgroups, generally conforming to the industry subgroups customarily used by the Treasury in publishing statistics based on income tax returns.

Where the taxpayer qualifies for relief under any of Code Sections 442 to 446 inclusive, a modified formula for determining the average base period net income is to be used, and application must be made for the benefits of such section under Code Sec. 447(e).

The Congress recognized that the excess profits credit based either on the average income of the best three years in the base period or on invested capital may not be satisfactory for corporations experiencing unusually rapid growth during the base period. Thus, an alternative method for computing average base period net income of such corporations is provided for by Code Sec. 435 (e). This alternative is not available to a corporation commencing business after the beginning of the base period but it may qualify for relief under the new corporation formula heretofore discussed.

Only corporations which have started business before the beginning of the base period and which meet certain tests as to increased payroll, gross receipts or net sales may qualify for relief under the growth method.

There is no secret formula for minimizing the impact of excess profits taxes. A careful analysis must be made of every phase of the law and the facts of the taxpayer's business in order to utilize every opportunity for tax savings.

Looking to the Future—More and More Taxes

Prior to the enactment of the excess profits tax it was quite apparent that there was considerable opposition to the law. If the decision of the Congress had been based on the preponderance of evidence, its verdict would clearly have been against an excess profits tax and in favor of other methods of increased taxation. With the exception of the Secretary of the Treasury and organized labor, virtually all of the witnesses were directly or inferentially opposed to an excess profits tax. Business representatives almost uniformly opposed the tax, although realizing that the alternative was a substantial increase in standard corporate rates, which for many corporations would result in a larger liability than under almost any excess profits tax which could be enacted. Despite all that, the law was passed.

What of the future? With the mounting requirements for national defense, one need not be a seer to envisage many new forms of revenue. It is even possible that we may see modifications of the 1950 excess profits tax act that will result in increased revenues from the excess profits tax by increasing rates or eliminating some of the relief provisions discussed.

Lawyer's LIBRARY

New Books

Balter, H. G. *Fraud under Federal tax laws.* Commerce Clearing House, 1951. 320 p. $6.00.

Birley, Robert. *The school, society and the delinquent.* London, Clarke Hall Fellowship, 1950. 34 p. 1s.

Blackwell, T. E. *Current legal problems of colleges and universities,* 1949-50. St. Louis, Mo., Washington University, 1950. 36 p. $1.00.

Brown, Emily Clark. *National labor policy.* Washington, Public Affairs Institute, 1950. 80 p. $0.50.

Casswell, Donald, ed. *Trial of Ronald True.* 2d ed. London, Hodge, 1951. 295 p. 15s. (Notable British Trials Series)

Dickinson, Edwin D. *Law and peace.* University of Pennsylvania Press, 1951. 154 p. $3.25.

Fisch, Edith L. *The cypres doctrine in the United States.* Matthew-Bender & Company, 1951. $10.00.

Fisher, R. A. *Creative aspects of natural law; the fourth Arthur Stanley Eddington memorial lecture.* New York, Cambridge University Press, 1951. 28 p. $0.50.

Moore, Barrington, Jr. *Soviet politics—the dilemma of power.* Harvard University Press, 1950. 503 p. $6.00.

Pittoni, Mario. *Suggestions on brief writing and argumentation.* Brooklyn, Foundation Press, 1951. 102 p. $2.00.

Rossiter, Clinton. *The Supreme Court and the Commander in Chief.* Cornell University Press, 1951. 153 p. $2.50.

Sellers, Horace B. *The Constitution and religious education.* Boston, Christopher, 1950. 146 p. $2.25.

Swisher, Carl Brent. *The theory and practice of American national government.* Boston, Houghton, 1951. 976 p. $5.00.

Taylor, John. *An inquiry into the principles and policy of the government of the United States.* Yale University Press, 1950. 562 p. $7.50.

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International Crime and the U. S. Constitution

Condensed by member Samuel D. Golden from INTERNATIONAL CRIME AND THE UNITED STATES CONSTITUTION *by Professor Oliver Schroeder, Faculty School of Law, Western Reserve University.*

On January 12, 1951, the Convention of the Prevention and Punishment of Genocide became a part of World Law. Many people will feel a tinge of patriotic regret that the United States was not one of the twenty ratifying countries that brought the convention into effect. The Senate's delay in passing the convention as a treaty can be partially blamed upon the heated opposition of some members of the American Bar Association. Uniquely, the genocide convention has been debated in America, virtually as a technical legal question. Professor Schroeder's monograph presents exactly the kind of argument and documentation needed by proponents of the convention to push its final ratification. The following is a short summary of the article.

The Nazis committed the most horrible acts of genocide in all history when they mass-murdered 6,000,000 Jews, several million Slavs, and almost all of the European Gypsies before and during World War II. In the Nurenberg trials, the Nazis were held accountable for some of these acts, but those only that violated international rules of war concerning the treatment of civilian populations. They were never tried and punished for the central inhumanity of all those acts: the calculated murder of members of a national, ethnical, religious or radical groups with the intention of destroying those groups. They were not tried for these crimes because there were then no international precedents to support an indictment for genocide.

To supply this great lack in the law of international crimes, the United Nations spent some two years in debate and preparation, and on December 8, 1949, the General Assembly passed the Genocide Convention.

The Convention declares genocide an international crime, defining it as: killing or inflicting bodily or mental harm, on members of a national, ethnical, racial or religious group; or inflicting calculated destructive restrictions on groups; restricting births; or, forcibly transferring the children of one group to another group; all with the intent of destruction. Any persons, including rulers and public officials, are punishable for genocide, and for conspiracy, attempt, direct and public incitement to genocide, and complicity in genocide. Each ratifying country agrees to pass laws punishing these acts and providing for trial in a national court, or if the country later accepts its jurisdiction, in an international penal tribunal. The countries agree to extradite persons accused of genocide. Any ratifier may raise a question of the prevention of genocide before any United Nations agency; and any disputes of interpretation under the convention are referrable by a country to the International Court of Justice.

Some of the objections raised by lawyers opposed to the Convention are really political rather than constitutional. For instance, should the Senate make a binding commitment that Congress will pass certain legislation? The quick answer is that it often has done so in the past, with respect to aliens' rights.

To those persons who complain that this is a problem of state law enforcement, the reply is that the enormity of a genocidal act justifies federal concern; in fact some acts of genocide may already be punishable crimes under the Federal Civil Rights Act.

Some critics believe the Convention is so loosely drawn that the mere enforcement of existing segregation laws in the South would make a public official liable for genocide. But the most rabid Dixiecrat does not ordinarily have the requisite intent of destroying the Negro race— and if any man should have such an intent and commit anti-Negro acts, why should he not be branded a national criminal in the country which gave birth to The Declaration of Independence?

People have questioned the wisdom of submitting American citizens to possible trial by a foreign or international tribunal. But the Convention does not provide for compulsory jurisdiction of an international court until a

country later agrees to it. Some existing treaties already provide for the trial of American citizens abroad. The interpretative jurisdiction of the I.C.J. is also well-precedented. Most important, we must recognize that acts of genocide have created international incidents in the past, and that the responsible thinking of the world has found them to be of grave international concern.

We come now to the constitutional arguments. If the Senate can by treaty commit Congress to pass certain laws, what of a law punishing genocide? Professor Schroeder finds this power squarely given in a rather little-used clause of the Constitution, Article I, Section 8:

> "The Congress shall have power to define and punish . . . offenses against the law of nations."

Support for a broad interpretation of this clause can be found in the constitutional debates, and in the statements of eminent Judges and statesmen in our history. The clauses's present vigor is shown by the probable reliance on it for the constitutionality of neutrality legislation which prohibits trading with a belligerent. Thus Congress can take cognizance of the world's present attitude that genocide is an international crime, as the Convention itself proclaims, and "define and punish" the offense.

The second major constitutional issue is whether the treaty-making power, Article II, authorizes State ratification. In part this is also a political argument, since few lawyers have expressed fear that the treaty power may run away with the Constitution. The classic case of Missouri v. Holland, 252 U. S. 416 (1920) holds that the treaty power (taken with the Supremacy Clause, Art. VI) can support a statute of Congress that would otherwise be beyond federal power. Preserving local order is primarily the state government's job, and sanctioning national—and international—punishment of genocide might be a precedent for taking over all state government.

The author rejects this argument. Under the American system, the judiciary has provided a check upon any run-away treaty power through conservative interpretation; there is even a case that can be cited for holding a treaty unconstitutional (New Orleans v. U. S. 10 Pat. (U. S. 1836) 662). There are some limitations on the treaty power: probably no treaty would be upheld (if, indeed it were ever ratified by ⅔ of the senate) if it brought about an end to state government or conflicted with a fixed provision of the Constitution. The Tenth Amendment, however, should provide no difficulty, since the line separating federal and state jurisdiction is a matter for redefinition as American society develops. The Convention is truly international in character, it violates no specific provision of the constitution, and it is within the scope of previous treaties that have been upheld. The author cites *Baldwin* v. *Franks*, 120 U. S. 678 (1887), as upholding a treaty and implementing legislation which made it a federal crime to exercize violence against Chinese nationals. Surely if the 19th Century Supreme Court could uphold such a treaty and statute, today's court will find legislation protecting groups from mass-slaughter well within the Constitution.

A final argument made by the American Bar Association is that the treaty, once ratified, will be self-executing by virtue of the Supremacy Clause. The author concedes that in America treaties may become law without statutory implementation. But a reading of the Convention, and the intentions of the drafters, convince one that this Convention, by its own terms, would require a federal statute before it could be used to convict anybody. Even if the treaty is self-executing Congress may at any time pass a law negating its effect.

The monograph concludes with a concise "legislative history" of the Convention, and the Convention text. Although the chief criticisms of the Convention have been that it goes too far, one argument is that it does not go far enough. An earlier draft included "political" as one of the types of protected groups. This would immediately cast doubt upon the Soviet Union's activities in suppressing and, perhaps, attempting to destroy opposition political parties, and nationalist movements in its satellite countries. An answer is that the Convention cannot do everything, and if the world has agreed to the very considerable extent that the Convention shows, we should not reject the Convention because it has not everything we would want. It is also true that acts against political groups often react against national groups as well; indeed, what is a "nationalist" movement if not a political one?

Judge Waugh at Installation

The arrangements committee in charge of the ceremonies of annual installation of officers and newly elected members of The Board of Managers of The Decalogue Society, announces that the principal speaker at the affair will be Judge William F. Waugh, Judge of the Probate Court, Cook County.

The installation is scheduled for Friday noon, June 29 in the Grand Ballroom, Covenant Club. Luncheon will be served.

Members are urged to reserve this date and invite their families, guests, and friends in the profession.

APPLICATIONS FOR MEMBERSHIP

H. Burton Schatz, *Chairman*

APPLICANTS	*SPONSORS*
Sidney Friedland	H. Burton Schatz
Ely Hefter	Leonard J. Grossman
Theodore E. Kurtz	Hyman Schechet
Howard Sherman	H. Burton Schatz
Sydney Traistar	Benjamin Weintroub
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ELECTED TO MEMBERSHIP

Harry A. Goldsmith
Melvin A. Heller
Eugene D. Kaine
Sherwin I. Levinson
Seymour Scheffres
Myra Siegel
Samuel Kassel

SOCIETY HOST TO YOUNG LAWYERS

An evening of welcome and entertainment in honor of newly admitted members of the Illinois Bar was provided by our Society, Thursday, March 29, at the Hamilton Hotel.

The principal speaker for the occasion was Judge Abraham L. Marovitz of the Superior Court, Cook County. Past President, Oscar M. Nudelman gave several effective demonstrations of hypnotic craft. Present were officers of our Society and several members of the Board of Managers. Refreshments were served.

A number of guests applied for membership in The Decalogue Society of Lawyers.

THE CONGRESSIONAL RECORD

The acceptance address of Dr. Percy L. Julian, recipient of The Decalogue Award of Merit for 1950, delivered before our Society at the Palmer House, March 3, 1951, the welcoming address of President Carl B. Sussman, and the presentation made by Roy I. Levinson, are printed in the Congressional Record for April 4th and April 9th, 1951.

CHICAGO BAR ASSOCIATION

The following Committee on Bankruptcies and Reorganizations of the Chicago Bar Association has been appointed by George E. Woods, President.

Norman H. Nachman, Chairman, Archie H. Cohen, vice-Chairman. Other members of The Decalogue Society of Lawyers appointed on this committee are: Mark T. Barnett, John H. Chatz, Michael Gezas, and Carl B. Sussman.

JUDGE JULIUS H. MINER

Member Julius H. Miner, Judge of the Circuit Court of Cook County, is the Republican candidate for Judge of the Supreme Court of Illinois for the Seventh Supreme District, at the judicial election on June 4th.

PAUL G. ANNES

Paul G. Annes member of our Board of Managers and nominee for Second Vice-President of The Decalogue Society of Lawyers has been elected chairman of the Chicago Council Against Racial and Religious Discrimination. The Council was organized in 1943 "as a non-profit organization to coordinate efforts to eliminate inter-group tensions by education, legislation, and direct action." More than one hundred civic, cultural and religious bodies comprise the Council.

Annes is former President of the City Club of Chicago.

Among the Decalogue members on the Council's Board are: Joseph P. Antonow, Samuel H. Holland, Charles Komaiko, Morris Alexander, Elmer Gertz, Nathan Schwartz and Congressman Sidney Yates.

BOOK REVIEWS

Self-Incrimination. What Can An Accused Person Be Compelled To Do? By Fred E. Inbau. Charles C. Thomas, Pub. 92 pp. $2.50.

Reviewed by ELMER GERTZ

This useful little work by a professor of law at Northwestern University is one of the monographs in the series on public protection, which includes works on such varied subjects as the legalizing of gambling and the use of chemical tests for alcohol in traffic law enforcement. The book, like others in the series, is intended not only for professionals, such as prosecuting attorneys, defense counsel, judges and police officers, but for the growing number of citizens who want succinctly written but authentic material on public problems.

In an Introduction there are a short history of the privilege against self-incrimination and a statement of the policy back of the privilege. Professor Inbau says that the privilege "exists mainly in order to stimulate the police and prosecutor into a search for the most dependable evidence procurable by their own exertions; otherwise there probably would be an incentive to rely solely upon the less dependable admissions that might be obtained as a result of a compulsory interrogation." He then makes this startling statement: "Were it not for this consideration it might well be contended that the privilege against self-incrimination has outlived its usefulness."

With the progress in scientific technology has come an enlargement of the scope of the inquiry concerning the privilege. This is evidenced by the subject-matter of the twelve chapters which deal with such problems as footprint comparisons; examination of the body for scars, marks and wounds; medical examination of sexual organs; putting on or removing wearing apparel, the removal of disguising effects, and standing up or assuming various positions, all for identification purposes; fingerprints and photographs; handwriting comparisons; voice identification; mental examination; detection of deception test, such as lie-detector and truth-serum; the removal of incriminating evidence from upon or within the body of accused person.

Professor Inbau concludes his inquiry with a paragraph which lawyers in particular will want to bear in mind:

"THE TEST as to the applicability of the self-incrimination privilege in any case situation is whether the compulsory evidence is of a *testimonial* nature. In other words, has an *incriminating statement* been extracted from the accused? Has he been compelled to *discuss* the issue of his guilt or innocence? Of the various groups of cases previously analyzed, only two present situations which may reasonably be considered within the coverage of the privilege: the testing for deception and for sexual psychopathy. The other groups all involve the procurement of non-testimonial, physical evidence and thereby fall short of the scope of the privilege—not only by reason of its historical origin and purpose but also because of policy considerations as well."

This would indicate how limited the much wanted privilege against self-incrimination really is. Whether one adjudges this good or bad will depend upon whether one's personal devotion to the integrity of the individual is greater than one's desire to see the guilty apprehended, convicted and punished.

The Constitution and Religious Education, by Rev. Horace B. Sellers. The Christopher Publishing House. 146 pp. $2.25.

Reviewed by PAUL G. ANNES

This book was written in disapproval of the decision by the United States Supreme Court in 1948 in the now well-known McCollum case, to show why that decision was not sound. The inadequacy of the work is that it substitutes the author's personal views and preferences for any convincing argument. The issue drawn by the author is summarized by his stated objective, to be embodied if necessary in a Constitutional Amendment: that "religious education in our public schools, non-sectarian in character, shall not be deemed a violation of our United States Constitution or any Amendments thereof."

The answer depends on what we mean when we say that we are all in favor of the Constitutional limitations of the First and Fourteenth Amendments to the Federal Constitution; on what kind of a "wall of separation between Church and State—in the words of Thomas Jefferson—will best promote our fundamental purpose. The fallacy in Rev. Sellers' position is that *religious* instruction, supervised in any substantial measure by public authorities, and particularly when given on school property during regular school hours—calling it "dismissed time" is a euphemism—does involve the State in *sectarian* religious education.

The entire tradition of this nation from its very beginning is against such religious instruction. As was so well said by Justice Black, the constitutional limitation "rests upon the premise that both religion and government can best work to achieve their lofty aims if each is free from the other within its respective sphere . . . . the First Amendment has erected a wall between Church and State which must be kept high and impregnable."

Decalogue Golf Outing Tuesday, July 10th

The Decalogue Society's Seventeenth Annual Golf Outing and Dinner Dance is scheduled this year for Tuesday, July 10 at St. Andrews Country Club, West Chicago, Illinois.

Reserve this date for an all day of recreation—open air and intra-mural. Bring your family, friends and clients. The Committee in charge of this event promises to surpass all former records in making this outing outstanding in the annals of our Society.

"'What do you know about this business?' the King said to Alice.

'Nothing; said Alice.

'Nothing whatever?' persisted the King.

'Nothing whatever,' said Alice.

'That's very important,' the King said, turning to the jury."

LEWIS CARROLL, *Alice in Wonderland.*

Urge Benjamin's Reappointment

In keeping with a recommendation of our Civic Affairs Committee, our Board of Managers instructed President Carl B. Sussman to address a letter to Mayor Martin H. Kennelly urging the reappointment of Claude M. Benjamin as Commissioner of the Chicago Housing Authority.

SORROW

The Decalogue Society of Lawyers announces with deep regret the death of:

Member Samuel S. Epstein, Illinois State Representative and physician.

ELECTED

Members John H. Chatz and Solomon E. Harrison were elected Directors of the Covenant Club of Illinois.

JUDICIAL CANDIDATES SPEAK

Following the Decalogue Society's custom to invite candidates for Judicial office to address our membership both of the candidates for the office of Justice of the Supreme Court of Illinois Seventh Supreme Judicial District, addressed our membership on two successive Friday luncheon meetings at the Covenant Club.

Member Judge Julius H. Miner candidate on the Republican ticket spoke Friday May 11, while Justice Walter V. Schaeffer the Democratic aspirant for the office spoke Friday, May 18.

CONGRATULATIONS

Our Past President Oscar M. Nudelman's son, Harold, was recently admitted to the Illinois Bar. The shingle will now read: "Nudelman and Nudelman."

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A Publication of The Decalogue Society of Lawyers

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Israel Independence Bond Drive

AN UNPRECEDENTED DRIVE sponsored by virtually every Jewish organization to enlist the help of American Jewry in behalf of Israel is currently under way in the United States. It is the floating of a $500,000,000 "State of Israel Independence Bond Issue" in this country. Henry Morgenthau, Jr., former U. S. Secretary of the Treasury, and Chairman, Board of Governors, American Financial and Development Corporation for Israel in charge of the campaign, thus defines the purposes of the drive:

> "The purpose is, over the years, to shift the emphasis from philanthropic support of Israel to the kind of self-help that can only come from solid economic growth."

and

> ". . . Israel could not (heretofore) wait for bond issues or economic independence to gather to its soil and assume the burden of hundreds of thousands of homeless Jews, who came to seek refuge and a new life. None of us would have wanted it otherwise, but that is the ultimate fact that has really made necessary this financial program."

This is what the bond issue will do for Israel:

1. Enable Israel to absorb 600,000 new immigrants in the next three years.
2. Develop the building industry and establish new steel and aluminum mills.
3. Inaugurate new irrigation programs and manufacture agricultural machinery.
4. Add new weaving and spinning mills to develop and expand the textile industry.
5. Make possible production of potash at the Dead Sea and manufacture other chemicals.
6. Increase citrus cultivations for export and expand the growing fishing industry.

After outlining in an explanatory circular addressed to possible bond purchasers the types of bonds offered, methods of payment of interest, convertability, redemption, rate of return on investments, and other such financial details, Morgenthau adds:

> "The success of the Bond Issue will be the third of the great acts which have been decisive determinants of the history of our redemption. The other two are victory in our War of Independence, and the ingathering of the homeless." Editor

* *